IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.170/1998.

Shri Dadi Gangaram Naik
of Shiroda, Goa. .... Petitioner.

Vs.

1. Adarsha Vidya Prasarak
Mandal, Shiroda, Goa.

2. Chairman,
Managing Committee,
Smt. Kamlabai Hede High
School, Shiroda, Goa.

3. Director of Education,
Government of Goa,
Panaji, Goa. .... Respondents.

Shri S.K. Kakodkar, Sr. Advocate with Mr. Joel D'Souza, Advocate for the petitioner.

Shri D.B. Ambekar, Advocate for the respondents No.1 and 2.

Shri Guru Shirodkar, Addl. Govt. Advocate for the respondent No.3.

CORAM: R.J. KOCHAR &
P.V. HARDAS, JJ.

DATE OF RESERVING THE
JUDGMENT : 20/08/2003.
DATE OF PRONOUNCING THE
JUDGMENT : 02/09/2003.

JUDGMENT: (Per KOCHAR, J.)

The petitioner has prayed for a writ of mandamus or an appropriate writ or order or direction under Article 226 of the Constitution of India directing the respondents No.1 and 2 to pay to the petitioner salary and allowances, including all the consequential

benefits for the period from 22.2.1990 till the date of reinstatement in service, by the respondents.

2. The petitioner was in employment as a Laboratory Assistant in Smt. Kamlabai Hede High School, Shiroda, Goa, run by respondent No.1. He was suspended from service by order dated 28.3.1989, pending disciplinary inquiry to be initiated against him. It appears that after completion of the inquiry, he was removed from service with effect from 22.2.1990 under Rule 94(1)(b)(iii) of the Goa, Daman and Diu School Education Rules, 1986 (hereinafter, referred to as "the said Rules"). It was stated in the said order of removal that the penalty of removal was imposed on the petitioner after getting the approval from the Directorate of Education. The petitioner approached the Administrative Tribunal of Goa, Daman and Diu at Panaji by filing an education appeal No.1/1990, challenging the order of removal passed by the respondent No.2 as the Chairman of the Managing Committee of the School. The learned Division Bench of the Tribunal, by its Order dated 16.6.1992 partly allowed the appeal by quashing and setting aside the impugned order of removal and by further substituting a minor penalty of withholding three increments as provided under Rule 94(1)(a)(iii) of the said Rules. It was further directed by the Tribunal

that the petitioner was to be reinstated in the post he was holding on the day he was placed under suspension, forthwith. The Tribunal, however, did not grant the pay and allowances except the subsistence allowance which he was paid during the period of his suspension.

3.The petitioner, thereafter, appears to have written to the School Management by his letter dated 24.7.1992 as to when he should report for duty. It further appears that the respondent No.3, Director of Education, by his letter dated 28.9.1992, asked the respondent No.2, the Chairman of the Managing Committee to comply with the order of the Tribunal with immediate effect. It further appears that the School Management had approached this Court under Articles 226 and 227 of the Constitution of India, challenging the Order of the Administrative Tribunal. On 30.10.1992, the order of reinstatement of the petitioner was stayed by this Court at the request of the School Management. It further appears that on 5.2.1997, the said Writ Petition filed by the School Management was dismissed and the stay of reinstatement stood vacated.

4. On 3.3.1997, after the dismissal of the petition of the Management, the petitioner once again appears to have approached the School Management

inquiring as to when he should resume his duty. There is no dispute that the School Management allowed the petitioner to resume his duty with effect from 1.4.1997. Further there is no dispute that he is still in employment of the School and he has been receiving his regular pay and allowances thereafter.

5. By letter dated 20.1.1998, the respondent No.2 has passed the following order :

> "In exercise of powers conferred upon me under Rule 98 of the Goa, Daman & Diu School Education Rules, 1986 and in continuation with ORDER No.AVPM/KHHS/96-97/12 dated 27.3.1997 and in pursuant to judgement/Order passed by Hon'ble Bombay High Court, Panaji Bench dated 05.02.97 passed in Writ Petitions No.261/98 and 453/92 read with Order passed by Administrative Tribunal in Education Appeal No.1/90 withholding of three increments will have non-cumulative effect and your absence from duty including period of suspension preceding removal from services till the date of report for duty i.e. w.f. 28-03-1989 upto 31.3.97 shall be treated as period spent on duty only for the

> purpose of retirement and pensionary benefits and the period shall not be allowed to be counted for leave and increments and you, will be entitled for subsistence allowance from the date of your removal from services as Lab. Assistant of the School till the date of reporting to duty i.e. from 20.02.1990 to 31.03.1997; out of which period you have been already paid subsistence allowances from 28.03.1989 to 19.02.1990".

6. The petitioner is aggrieved by this order passed by the respondent No.2 as the Chairman of the Managing Committee of the School ordering to treat the period from 28.3.1989 upto 31.3.1997 as the period spent on duty only for the purposes of retirement and pensionary benefits and that the said period was not to be allowed to be counted for leave and increments and that he was to be treated under suspension to get only subsistence allowance from the date of his removal from 20.2.1990 to 31.3.1997. The effect of this order was that after the order of reinstatement passed by the Tribunal and confirmed by this Court, the petitioner was denied the consequential benefits under the normal rule of full back wages after the order of removal was

quashed and set aside. The School Management treated even the period after removal till reinstatement as the period under suspension. The petitioner was denied not only full back wages, but he was also denied all other consequential benefits of leave and increments, during the said period which he would have otherwise earned had he not been removed from his services.

7. Shri S.K. Kakodkar, the learned Senior Advocate urged that the aforesaid impugned order of the School Management was per se illegal and contrary to the orders passed by the Tribunal and this Court, whereby the petitioner was reinstated with full back wages and all other consequential benefits, except the punishment of withholding of three annual increments. According to him, the period from the date of removal till the date of reinstatement, cannot be treated as a period of suspension as purportedly done by the School Management. According to the learned Counsel, the suspension period from 28.3.1989 to 19.2.1990 had come to an end when the petitioner was removed from the services. The learned Counsel submitted that after the order of removal was quashed and set aside, the petitioner is entitled to get normal relief of reinstatement with full back wages and all other consequential benefits.

8. Shri D.B. Ambekar, the learned Counsel appearing for the respondents No.1 and 2 justified the order passed by the School Management. According to him, under Rule 92 read with Rule 98, the Management was empowered to treat the entire period upto the date of reinstatement, as a period of suspension. He further pointed out that for the entire aforesaid period, the petitioner has received the amount of subsistence allowance and nothing was due and payable. The learned Counsel further submitted that the respondent No.3 would become liable to pay to the petitioner his claim, if at all it is held that the petitioner is entitled to get the dues as claimed by him. He further submitted that the action of removal was taken after approval of the respondent No.3 and, therefore, the whole responsibility of the consequences of the order of removal having been struck down, would be on the respondent No.3. Shri Ambekar further submitted that the petitioner would not be entitled to get any salary or pay as a consequence of the order of reinstatement passed by the Tribunal, as the said order was stayed by this Court in the petition filed by the School Management. He submitted that soon after the High Court had dismissed the petition, the present petitioner has been reinstated with effect from 1.4.1991. As a result of the stay of the said order of reinstatement passed by this Court, the present

Petitioner would not be entitled to any pay for this period. The learned Counsel has, therefore, prayed for dismissal of the petition.

9. We do not agree with the submissions made by the learned Counsel Shri Ambekar for the respondents No.1 and 2, the School Management. We are also not inclined to accept the contention of the learned Counsel in respect of the responsibility to pay the arrears of the wages of the petitioner is that of respondent No.3. It is for the School Management, respondents No.1 and 2 that have to obey the order of the Tribunal and the order passed by this Court and we do not want to enter into the irrelevant controversy as to who amongst the respondents, has to pay the arrears, if held liable by this Court. We also do not find any merit and substance in the contention of Shri Ambekar that the School Management was empowered to treat the period intervening from the date of removal to the date of reinstatement as a period of suspension as contemplated by Rule 92, which is clear in its import that a delinquent employee has to be kept under suspension pending disciplinary proceedings against him and for other reasons set out in Rule 92. It is absurd to argue that under Rule 92 the School Management is empowered to treat the intervening period from the date of removal to the date of

reinstatement as a period of suspension. If we allow this contention of the learned Counsel, we would set at naught the order of reinstatement passed by the Tribunal and also the order dismissing the Writ Petition passed by this Court, confirming the said order. The consequence of quashing and setting aside the order of removal by the competent authority, is normally to be followed by reinstatement and full back wages and consequential benefits as if the concerned delinquent employee was never removed or dismissed or discharged from employment. The consequence, therefore, is to restore him to the original position and to give him all the benefits which have been wrongfully denied to him by an illegal and improper order passed by the employer. The concept 'suspension pending inquiry' is well known and well established and clearly crystallized by several Judgments of the Supreme Court and this Court and we need not burden this Judgment by citing any authority on this point. We are very clear in our mind, if order of removal, dismissal or discharge is held to be illegal and improper and a competent authority or Tribunal passes an award or order of reinstatement, in that case, the period from the date of removal, dismissal or discharge till the date of reinstatement, can never be treated as a period of suspension. The period of suspension, pending inquiry, comes to an end after the

final order of punishment is passed. Such a suspension having come to an end and merged in the order of punishment, it can never continue thereafter and, therefore, we do not find any merit or substance in the contention of the learned Counsel for the School Management that under Rule 92, the School Management was empowered to treat this period as suspension period. On the contrary, the import of Rule 92 is that such a period of suspension cannot be continued for more than six months and thereafter, if it is to be continued, the Managing Committee has to record the reasons specifically to continue the period of suspension after six months. It would be useful to reproduce for ready reference Rule 92 of the said Rules :

> "92. Suspension : - (1) Subject to the provision of sub-sections (3) and (4) of section 11, the Managing Committee may place an employee of a recognized private school, whether aided or not under suspension :-
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> (a) where a disciplinary proceeding against such employee is contemplated or pending; or
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> (b) where a case against him in respect

of any criminal offence is under investigation/trial; or

(c) where he is charged with cruelty towards any student, or other employees of the school; or

(d) where he is charged with embezzlement; or

(e) where he is charged with misbehaviour towards any parent, guardian, student or employee of the school; or an officer of the Dept.; or

(f) where he is charged with the breach of any other provision of code of conduct.

(2) No order of suspension shall remain in force for more than 6 months unless the Managing Committee, for reasons to be recorded by it in writing, directs the continuation of the suspension beyond the period of six months; subject to

sub-section (3) of Section 11 of the Act.

Provided that where the suspension is continued beyond the period of six months, the Director may, if he is of the opinion that the suspension is being unreasonably prolonged, revoke the order of suspension [after giving the Managing Committee of the School a reasonable opportunity of showing cause against the proposed action].

[(3) "If any doubt arises with regard to the application of the provision of this rule the same shall be resolved in accordance with the orders issued by the Government in respect of its employees of corresponding status."]"

Rule 93 prescribes the payment of subsistence allowance during the period of suspension. As we have already held that the period after removal cannot be treated as period of suspension, the petitioner is entitled to get full salary with all consequential benefits from the date of removal till the date of his reinstatement and there is no escape from the consequences of payment of full wages and all other

consequential benefits when an order of removal, dismissal or discharge is quashed and set aside and reinstatement is awarded.

10. There is absolutely no merit in the contention of Shri Ambekar that as the order of reinstatement was stayed by this Court, the petitioner would not be entitled to get any salary for this period. The Tribunal had quashed and set aside the order of removal and had directed reinstatement of the petitioner. The School Management had approached this Court under Articles 226 and 227 of the Constitution of India and had prayed for stay of the said order. It was at the request of the School Management that the order of reinstatement was stayed. Therefore, now, it does not lie in the mouth of the School Management that since the order of reinstatement was stayed, the School Management is not liable to pay any salary for that period to the present petitioner. The law on this point is very well established in the following decisions:

(1) In Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 2 SCC 1. The Supreme Court in Paragraph 10 of the said Judgment observed thus :

" In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material befire it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order

staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority

continues to exist in law and as long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No.16 of 1991 filed by the appellant-company against the order

of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No.126 of 1992, directed against the order for winding up of the appellant-Company. The said appeal, therefore, fails and is liable to be dismissed." (emphasis is added by us)

(2) In **Ouseph Mathai and ors. vs. M. Abdul Khadir, 2001 AIR SCW 4672,** Supreme Court in para 12, held as under :

"... It is settled position of law that stay granted by the Court does not confer a right upon a party and it is granted always subject to the final result of the matter in the Court and at the risks and costs of the party obtaining the stay. After the dismissal, of the lis, the party concerned is relegated to the position which existed prior to the filing of the petition in the Court which had granted the stay. Grant of stay does not automatically amount to

extension of a statutory protection."

(3) In **M/s. Consolidated Coffee Ltd. etc. vs. The Agricultural Income Tax Officer, Madikeri & Ors.** JT 2000 (Suppl.3) SC 62, the Supreme Court in paragraph 7 observed thus :

> " As has been pointed out by this Court in Kanoria Chemcials and Industries Ltd. v. U.P. State Electricity Board [JT 1997 (3) sc 545 = (1997) 5 SCC 772] an order of stay may be made in different ways but the effect thereof is the same namely, that for the period during which an order of stay operates, the order that is stayed, does not exist in the eyes of law. Once the stay is vacated, the order is resuscitated and may then be executed. For the period of stay, therefore, the assessee cannot be said to be in default of the orders stayed and, therefore, no penalty in that behalf can be imposed."

It is, therefore, well established that as soon as the order of stay or injunction is vacated, the order under challenge gets revived with all its consequences which start flowing. By interim order of stay or injunction,

what is done is only the effect of the order under challenge is stayed. It is not that the impugned order was made ineffective or inoperative at that time. The legality of the said order was finally decided. In the present case, it was held to be a legal order of the Tribunal. Therefore, the effect of the said order stood revived and, therefore, the School Management became liable to enforce the said order. Reliance of the learned Counsel for the School Management on Rule 98 in support of the impugned Order is wholly misconceived and misplaced. It would be useful to reproduce Rule 98, which reads as under :

> "98. Payment of pay and allowances on reinstatement. – [(1) When an employee who has been dismissed, removed or compulsorily retired from services or reduced in rank or whose service is otherwise terminated, is re-instated or restored to his original rank or position as a result of appeal or the decision of the Director of Education under sub-rule (2) or rule 97 or would have been so re-instated or restored to his original rank, but his retirement on superannuation while under suspension proceeding the dismissal, removal or compulsory retirement

as the case may be, the Disciplinary Authority shall consider forthwith and make specific order . –

(a) for the payment of the salary and allowances to the employee for the period of his absence from duty, including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) that the said period of absence shall be treated as the period spent on duty.

(2) Where the employee who had been dismissed, removed or compulsorily retired from service has been exonerated, the employee shall be paid the full salary and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired from service or suspended prior to such dismissal, removal or compulsory retirement from service as the case may be;

Provided that where the Disciplinary Authority is of opinion that the termination of the proceeding instituted against the employee had been delayed due to reason directly attributable to the employee, it may, after giving a reasonable opportunity to the employee to make representation and after considering the representation, if any, made by the employee, direct for reasons to be recorded by it in writing, that the employee shall be paid for the period of such delay only such proportion of the salary and allowances as it may determine.

Provided further that the employees, if aggrieved by the decision of the Disciplinary Authority, may, within 30 days from the date of receipt by him of such a decision, prefer an appeal to the Director of Education through proper channel as laid down in sub-rule (5) of Rule 90.

(3) The payment of allowances shall be subject to all other conditions under which such allowances are admissible and the

proportion of the full salary and allowances determined under the proviso to sub-rule (2) shall not be less than the subsistence allowance and other admissible allowances." (emphasis is added by us.)

11. It is very pertinent to note that Rule 98(2) makes it obligatory for the School Management to pay full salary and allowances to which a dismissed or removed employee become entitled, had he not been so dismissed or removed. Such an employee is entitled to full salary and allowances to which he would have been entitled had he not been so dismissed or removed from the service. We, therefore, reject the contention of Shri Ambekar that the School Management or the Disciplinary Authority is empowered to treat the period from the date of removal till the date of reinstatement as a period of suspension under Rule 98, supra. It is to the contrary.

12. There is an obvious fallacy in the submission of Shri Ambekar that it is for the respondent No.3 to bear the burden of full salary as the action of removal was taken after the same was approved by the respondent No.3. It is true that the respondent No.3 had granted approval to the action of removal of the

petitioner. It is not that the Respondent No.3 is required to sit in appeal over the decision of the School Management. Grant or refusal to grant approval is ordinarily based on prima facie consideration of the order submitted for approval under the Rules to put check on the arbitrary exercise of power vested in the Management. The said authority granted approval of the order of removal of the Petitioner on getting satisfied prima facie to grant approval and nothing more. That itself, however, does not cast any obligation or liability on him to pay the full salary in controversy once the said order of removal getting quashed and set aside. We further cannot forget that as soon as the Tribunal had set aside the order of removal, the respondent No.3 had instructed the School Management to comply with the order passed by the Tribunal, but the School Management did not give any heed to the advice of the respondent No.3, but instead, the School Management approached this Court by challenging the order of the Tribunal. In these circumstances, the School Management, therefore, cannot shift their burden on the respondent No.3. It is for the School Management to pay the full salary and allowances from the date of removal i.e. 22.2.1990 till 31.3.1997, the date of reinstatement with all the consequential benefits. The School Management, however, will be entitled to adjust

the amount of subsistence allowance paid to the petitioner during this period.

13. We clarify that respondent No.3 or the Sate Government Authorities are not liable to pay any amount to the petitioner on this ground and it is the sole responsibility and liability of the School Management to pay the full salary and allowances and other consequential benefits to the petitioner had he not been illegally removed from the employment. The learned Counsel appearing for the respondent No.3 has rightly pointed out that the State Government has made payment to the School Management for the salary of the substitute employee who was appointed in the place of the petitioner. They have made payment for one post. In fact, it was the duty of the School Management to have accepted the advice of the respondent No.3 to reinstate the petitioner to avoid the burden of one post. The School Management instead preferred to continue the substitute employee in the place of the petitioner at its own risk and peril. Now, therefore, the School Management cannot be heard to say that respondent No.3 or the State Government should bear the burden of full salary and allowances and the consequential benefits which have accrued to the petitioner.

14. Before we conclude, we may also record that Shri Ambekar has raised a point of maintainability of the present petition against a private school. It is an admitted fact that the School Management is an aided institution getting 100 per cent aid from the State Government. The point of maintainability of a writ petition under Article 226 of the Constitution of India is no more res integra. The Supreme Court in the case of **Unnin Krishnan J.P. vs. State of Andhra Pradesh,** A.I.R. 1993 S.C. 2178 and the Division Bench of this Court in the case of **Anand A. Kanolkar vs. Director of Education and ors.** 1996(1) Goa L.T. 281 had considered the point of maintainability of a writ petition against a private School Management. In an identical situation, the Supreme Court has laid down that a writ of mandamus would lie against a private educational institution like the respondent. In the case of **Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and ors. vs. V.R. Rudani and ors.** A.I.R. 1989 SC 1607, the Supreme Court has once again crystalised the law as under :

> " If the rights are purely of a private character no mandamus can issue, if the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to

Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. The law relating to mandamus has made the most spectacular advance. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226 in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The

form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. It may be pointed out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. (Paras 14, 15, 16, 19, 21)"

The Supreme Court in **Francis John vs. Director of Education and others, 1989 Supp. (2) SCC 598,** in paragraph (10), has observed as under :

> "...Any private school which receives aid from the government under the Grant-in-aid Code, which is promulgated not merely for the benefit of the management but also for the benefit of the employees in the school for whose salary and allowances the government was contributing from the public funds under the Grant-in-aid Code cannot escape from the consequences flowing from the breach of the Code and particularly where the Director of Education who is an instrumentality of the State is participating in the decision making process. Under these circumstances we find that the High Court was wrong in upholding that the orders of the Director of Education and of the Disputes Settlement Committee were not amendable to the jurisdiction of the High Court under Article 226 of the Constitution since the matter squarely falls within the principles laid down by this Court in Tikaram case."

15. There is, therefore, no substance in the contention of School Management that the present petition is not maintainable against it and that no writ

can be issued by this Court under Article 226 of the Constitution of India.

16. Shri Ambekar further made a submission that the petitioner has become far better off and affluent and that he had become a director of some Society, etc., and that he has earned additional income during the period after his removal. Ordinarily this submission would have been rejected by us as it is totally an irrelevant consideration that during the period after his removal, the petitioner had earned anything. Ordinarily, he is entitled to get the full salary and allowances as a result of the order of the Tribunal setting aside the Order of removal as illegal. The petitioner's entitlement is based on the order of the Tribunal and the Order of this Court. However, we are inclined to consider to grant some respite to the School Management on the ground of it being an educational institution, managing its affairs with the aid from the State Government and charities from the Society. It is not a profit making industry or not the commercially conducted professional classes, charging exorbitant fees. It cannot be denied that the Petitioner has had some source of income or earning from some other occupation. We, therefore, are not inclined to grant him full backwages for the intervening period.

We, therefore, direct the School Management to pay the petitioner 60 % of his full pay and allowances and other consequential benefits. It shall deduct from the total amount of 60 % the amount of "subsistence allowance" already paid to him during this period and pay the balance within 12 weeks.

17. Writ petition is partly allowed. Rule is made absolute partly in terms of prayer Clauses (a), (b) and (c). No orders as to costs.

18. If the respondents No.1 and 2 fail to comply with this order, within a period of 12 weeks from today, respondent No.3 shall exercise his powers under Rule 58, 59 and 60 of the said Rules to pay the amounts to the petitioner by deducting the same from the aid payable to the School Management.

R.J. KOCHAR, J.

P.V. HARDAS, J.

ssm.